

Court Nominees Termed Nixon's Stand-by Choices

NYTimes

By ROBERT B. SEMPLE Jr. OCT 23 1971

Special to The New York Times

WASHINGTON, Oct. 22 — Informed sources said today that President Nixon and Attorney General John N. Mitchell had intended to name Herschel H. Friday and Mildred L. Lillie to the Supreme Court. The sources said that the two men nominated last night, while highly regarded, were essentially "fallback," or stand-by, candidates.

Mr. Nixon told a nationwide television audience last night that he had selected Lewis F. Powell Jr., a former president of the American Bar Association, and William H. Rehnquist,

an Assistant Attorney General to fill the two vacancies on the Court.

The President's surprise choices followed by one day reports that the American Bar Association's Committee on the Federal Judiciary had decided 11 to 1 that Mrs. Lillie was unqualified to serve on the Court and had split, 6 to 6, on a motion to record the committee as "not opposed" to Mr. Friday.

According to the sources, however, the White House learned earlier—late last week in Mrs. Lillie's case and early this week in Mr. Friday's—that the prospects of Senate confirmation for both candidates were not good.

According to the sources, the White House then began searching for other names, told Mr. Powell and Mr. Rehnquist in midweek that they were under serious consideration, and settled on the two men after a final, last-minute strategy ses-

Continued on Page 16, Column 4

Continued From Page 1, Col. 6

sion yesterday morning.

At that meeting, the Washington informants said, efforts were made to salvage Mr. Friday's candidacy by pairing him with a candidate that liberals would find more attractive. But these efforts failed.

Ronald L. Ziegler, the White House press secretary, said at his news briefing this morning that the President had not made a "final decision" on his nominees until yesterday morning.

However, Mr. Ziegler refused to concede that Mr. Nixon's eleventh-hour decision meant that his two nominees were fallback choices. On the contrary, the thrust of the press secretary's case was that Mr. Nixon had simply kept an open mind on the candidates and had never committed himself to anyone.

Mr. Ziegler was then asked why the President had chosen to submit only six names to the bar association for its approval, and why the names of Mr. Rehnquist and Mr. Powell were not on it. His answer was that Mr. Nixon wanted to learn more about the qualifications of the six, that the question of placing the names of Mr. Rehnquist and Mr. Powell before the bar committee was not "raised," and that, in any event, their qualifications were so obvious that consultation "would have been, I believe, a formality."

Debate Over Leaks

Meanwhile, the argument between the Administration and the bar association over leaks of names of the six potential nominees last week—the six includes Mrs. Lillie and Mr. Friday—seemed to intensify.

In a speech to the National Federation of Republican Women this morning, Mr. Nixon suggested that Mr. Lillie might have got a "better break" from the bar association committee, and said he thought the committee, composed of 12 men, "should at least have one woman on it." He predicted that "there will be a woman on the Court in time."

In a letter sent to the American Bar Association last night, Attorney General Mitchell terminated the Administration's agreement to check the judicial qualifications of Supreme Court nominees before formally naming them to the Court. He cited what he called "premature disclosures" of the names.

In a written reply today, Judge Lawrence E. Walsh, chairman of the A.B.A. Committee on the Federal Judiciary,



Associated Press

President Nixon being welcomed at the National Federation of Republican Women. Flanking him are Mrs. Tobin Armstrong, left, co-chairman of the Republican National Committee, and Mrs. J. Lloyd O'Donnell, president of the women's organization. At far left is Mrs. George Romney.

said he, too, had been deeply concerned by "public disclosure" but said that this was inevitable in any elaborate checking process that required canvassing the opinions of many people.

Mr. Walsh said in an interview that he had warned Richard G. Kleindienst, Deputy Attorney General, that the six names would surely leak, and had been told that this was "an acceptable disk."

Mr. Ziegler heatedly denied that the Administration had authorized or in any way condoned a leak. White House sources said the original leak had angered Mr. Nixon.

Mitchell 'Dead Set'

The sources who disputed Mr. Ziegler's assertions that Mr. Nixon never settled firmly on any one candidate acknowledged that the President undoubtedly wished to wait until the last moment to make a decision. But they pointed out that bar association officials themselves had said that the Justice Department asked them to concentrate their investigation on Mr. Friday and Mrs. Lillie.

The sources said that Mr.

Mitchell had been "dead set" on Mr. Friday, a Little Rock, Ark., bond lawyer, and that Mr. Nixon had made up his mind to appoint a woman.

This resolve was shaken when the named appeared in newspaper articles last Thursday after the "leak" and when the Justice Department was given evidence that Mrs. Lillie's husband, A. V. Falcone, had been sued 22 times in the last 10 years by credit bureaus and others.

And last Monday, two days before the A.B.A. committee voted on Mr. Friday and Mrs. Lillie, the Administration was said to have learned from bar association sources that both nominations were in trouble.

A meeting at the White House yesterday morning produced an effort by some unnamed officials to arrange a "pairing" of the conservative Mr. Friday with Arlin M. Adams, a liberal Republican Federal judge from Philadelphia. This effort collapsed, and the final telephone calls went to Mr. Powell, a Democrat, and Mr. Rehnquist, a Republican, shortly afterwards.